IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 7TH AUGUST 2007 / 16TH SRAVANA 1929

Bail Appl..No. 4756 of 2007()

[CRIME NO.122/2007 OF KUMBLA POLICE STATION]

PETITIONER/IST ACCUSED

HAMEED, AGED 21 YEARS,S/O. MOHAMMED,
RESIDING AT K.B. HOUSE,
KUNTENGARADKA, KOIPADY VILLAGE, KASARAGOD DISTRICT

BY ADV. SRI.SURESH KUMAR KODOTH
SMT.V.SETHUKUTTY AMMA

RESPONDENTS: RESPONDENT/STATE

STATE OF KERALA REPRESENTED BY
STATION HOUSE OFFICER, KUMBLA POLICE STATION
THROUGH THE PUBLIC PROSECUTOR ,
HIGH COURT OF KERALA , ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 07/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.4756 of 2007

Dated this the 7th day of August 2007

O R D E R

Application for anticipatory bail. The petitioner is the first accused. He, along with the co-accused, faces allegations inter alia under Sections 452 and 324 read with 34 I.P.C. He apprehends imminent arrest.

2. The learned Public Prosecutor, on instructions, submits that the investigators do not now want to arrest the petitioner as the investigation is already completed and the final report has already been submitted. It is for the petitioner to appear before the learned Magistrate and seek regular bail, it is submitted.

3. After the decision in Bharat Chaudhary v. State of Bihar [AIR 2003 SC 4662] it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of the accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

4. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which he could not earlier appear before the learned Magistrate. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs.Deputy Superintendent of Police [2003(1)KLT 339].

5. In the result, this bail application is dismissed but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

Hand over copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007